



**House Bill No. 5468**

**Public Act No. 06-28**

**AN ACT CONCERNING CERTIFICATE OF NEED CAPITAL EXPENDITURE THRESHOLDS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (4) of subsection (a) of section 19a-638 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

(4) Except as provided in sections 19a-639a to 19a-639c, inclusive, as amended by this act, each applicant, prior to submitting a certificate of need application under this section, section 19a-639, as amended by this act, or under both sections, shall submit a request, in writing, for application forms and instructions to the office. The request shall be known as a letter of intent. A letter of intent shall include: (A) The name of the applicant or applicants; (B) a statement indicating whether the application is for (i) a new, replacement or additional facility, service or function, (ii) the expansion or relocation of an existing facility, service or function, (iii) a change in ownership or control, (iv) a termination of a service or a reduction in total bed capacity and the bed type, (v) any new or additional beds and their type, (vi) a capital expenditure over [one] three million dollars, (vii) the purchase, lease or donation acceptance of major medical equipment costing over [four hundred thousand] three million dollars, (viii) a CT scanner, PET

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scanner, PET/CT scanner, MRI scanner, cineangiography equipment, a linear accelerator or other similar equipment utilizing technology that is new or being introduced into the state, or (ix) any combination thereof; (C) the estimated capital cost, value or expenditure; (D) the town where the project is or will be located; and (E) a brief description of the proposed project. The office shall provide public notice of any complete letter of intent submitted under this section, section 19a-639, as amended by this act, or both, by publication in a newspaper having a substantial circulation in the area served or to be served by the applicant. Such notice shall be submitted for publication not later than fifteen business days after a determination that a letter of intent is complete. No certificate of need application will be considered submitted to the office unless a current letter of intent, specific to the proposal and in compliance with this subsection, has been on file with the office at least sixty days. A current letter of intent is a letter of intent that has been on file at the office up to and including one hundred twenty days, except that an applicant may request a one-time extension of a letter of intent of up to an additional thirty days for a maximum total of up to one hundred fifty days if, prior to the expiration of the current letter of intent, the office receives a written request to so extend the letter of intent's current status. The extension request shall fully explain why an extension is requested. The office shall accept or reject the extension request not later than five business days from the date it receives such request and shall so notify the applicant.

Sec. 2. Section 19a-639 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

(a) Except as provided in sections 19a-639a to 19a-639c, inclusive, as amended by this act, each health care facility or institution, including, but not limited to, any inpatient rehabilitation facility, any health care

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facility or institution or any state health care facility or institution proposing (1) a capital expenditure exceeding [one] three million dollars, (2) to purchase, lease or accept donation of major medical equipment requiring a capital expenditure, as defined in regulations adopted pursuant to section 19a-643, as amended, in excess of [four hundred thousand] three million dollars, or (3) to purchase, lease or accept donation of a CT scanner, PET scanner, PET/CT scanner, MRI scanner, cineangiography equipment, a linear accelerator or other similar equipment utilizing technology that is new or being introduced into this state, including the purchase, lease or donation of equipment or a facility, shall submit a request for approval of such expenditure to the office, with such data, information and plans as the office requires in advance of the proposed initiation date of such project.

(b) (1) The commissioner shall notify the Commissioner of Social Services of any certificate of need request that may impact on expenditures under the state medical assistance program. The office shall consider such request in relation to the community or regional need for such capital program or purchase of land, the possible effect on the operating costs of the health care facility or institution and such other relevant factors as the office deems necessary. In approving or modifying such request, the commissioner may not prescribe any condition, such as but not limited to, any condition or limitation on the indebtedness of the facility or institution in connection with a bond issue, the principal amount of any bond issue or any other details or particulars related to the financing of such capital expenditure, not directly related to the scope of such capital program and within control of the facility or institution.

(2) An applicant, prior to submitting a certificate of need application, shall submit a request, in writing, for application forms and instructions to the office. The request shall be known as a letter of intent. A letter of intent shall conform to the letter of intent

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requirements of subdivision (4) of subsection (a) of section 19a-638, as amended by this act. No certificate of need application will be considered submitted to the office unless a current letter of intent, specific to the proposal and in compliance with this subsection, is on file with the office for at least sixty days. A current letter of intent is a letter of intent that has been on file at the office no more than one hundred twenty days, except that an applicant may request a one-time extension of a letter of intent of up to an additional thirty days for a maximum total of up to one hundred fifty days if, prior to the expiration of the current letter of intent, the office receives a written request to so extend the letter of intent's current status. The extension request shall fully explain why an extension is requested. The office shall accept or reject the extension request not later than five business days from the date the office receives the extension request and shall so notify the applicant. Upon a showing by such facility or institution that the need for such capital program is of an emergency nature, in that the capital expenditure is necessary to comply with any federal, state or local health, fire, building or life safety code, the commissioner may waive the letter of intent requirement, provided such request shall be submitted at least ten business days before the proposed initiation date of the project. The commissioner shall grant, modify or deny such request not later than ninety days or not later than ten business days, as the case may be, of receipt of such request, except as provided for in this section. Upon the request of the applicant, the review period may be extended for an additional fifteen days if the office has requested additional information subsequent to the commencement of the review period. The commissioner may extend the review period for a maximum of thirty days if the applicant has not filed, in a timely manner, information deemed necessary by the office. Failure of the office to act upon such request within such review period shall be deemed approval of such request. The ninety-day review period, pursuant to this section, for an application filed by a hospital, as defined in section 19a-490, as amended, and licensed as a short-term

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acute care general hospital or a children's hospital by the Department of Public Health or an affiliate of such a hospital or any combination thereof, shall not apply if, in the certificate of need application or request, the hospital or applicant projects either (A) that, for the first three years of operation taken together, the total impact of the proposal on the operating budget of the hospital or an affiliate or any combination thereof will exceed one per cent of the actual operating expenses of the hospital for the most recently completed fiscal year as filed with the office, or (B) that the total capital expenditure for the project will exceed fifteen million dollars. If the office determines that an application is not subject to the ninety-day review period pursuant to this subsection, it shall remain so excluded for the entire period of that application, even if the application or circumstances change and the application no longer meets the stated terms of the exclusion. The office shall adopt regulations, in accordance with chapter 54, to establish an expedited hearing process to be used to review requests by any facility or institution for approval of a capital expenditure to establish an energy conservation program or to comply with requirements of any federal, state or local health, fire, building or life safety code or final court order. The office shall adopt regulations in accordance with the provisions of chapter 54 to provide for the waiver of a hearing, for any part of a request by a facility or institution for a capital expenditure, provided such facility or institution and the office agree upon such waiver.

(3) The office shall comply with the public notice provisions of subdivision (4) of subsection (a) of section 19a-638, as amended by this act, and shall hold a public hearing with respect to any complete certificate of need application filed under this section, if: (A) The proposal has associated total capital expenditures or total capital costs that exceed twenty million dollars for land, building or nonclinical equipment acquisition, new building construction or building renovation; (B) the proposal has associated total capital expenditures

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per unit or total capital costs per unit that exceed [one] three million dollars for the purchase, lease or donation acceptance of major medical equipment; (C) the proposal is for the purchase, lease or donation acceptance of equipment utilizing technology that is new or being introduced into the state, including scanning equipment, cineangiography equipment, a linear accelerator or other similar equipment; or (D) three individuals or an individual representing an entity comprised of five or more people submit a request, in writing, that a public hearing be held on the proposal and such request is received by the office not later than twenty-one calendar days after the office deems the certificate of need application complete. At least two weeks' notice of such public hearing shall be given to the applicant, in writing, and to the public by publication in a newspaper having a substantial circulation in the area served by the applicant. At the discretion of the office, such hearing shall be held in Hartford or in the area so served or to be served.

(c) Each person or provider, other than a health care or state health care facility or institution subject to subsection (a) of this section, proposing to purchase, lease, accept donation of or replace (1) major medical equipment with a capital expenditure in excess of [four hundred thousand] three million dollars, or (2) a CT scanner, PET scanner, PET/CT scanner, MRI scanner, cineangiography equipment, linear accelerator or other similar equipment utilizing technology that is new or being introduced into the state, shall submit a request for approval of any such purchase, lease, donation or replacement pursuant to the provisions of subsection (a) of this section. In determining the capital cost or expenditure for an application under this section or section 19a-638, as amended by this act, the office shall use the greater of (A) the fair market value of the equipment as if it were to be used for full-time operation, whether or not the equipment is to be used, shared or rented on a part-time basis, or (B) the total value or estimated value determined by the office of any capitalized

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lease computed for a three-year period. Each method shall include the costs of any service or financing agreements plus any other cost components or items the office specifies in regulations, adopted in accordance with chapter 54, or deems appropriate.

(d) Notwithstanding the provisions of section 19a-638, as amended by this act, or subsection (a) of this section, no community health center, as defined in section 19a-490a, shall be subject to the provisions of said section 19a-638, as amended by this act, or subsection (a) of this section if the community health center is: (1) Proposing a capital expenditure not exceeding [one] three million dollars; (2) exclusively providing primary care or dental services; and (3) either (A) one-third or more of the cost of the proposed project is financed by the state of Connecticut, (B) the proposed project is receiving funds from the Department of Public Health, or (C) the proposed project is located in an area designated by the federal Health Resources and Services Administration as a health professional shortage area, a medically underserved area or an area with a medically underserved population. Each community health center seeking an exemption under this subsection shall provide the office with documentation verifying to the satisfaction of the office, qualification for this exemption. Each community health center proposing to provide any service other than a primary care or dental service at any location, including a designated community health center location, shall first obtain a certificate of need for such additional service in accordance with this section and section 19a-638, as amended by this act. Each satellite, subsidiary or affiliate of a federally qualified health center, in order to qualify under this exemption, shall: (i) Be part of a federally qualified health center, that meets the requirements of this subsection; (ii) exclusively provide primary care or dental services; and (iii) be located in a health professional shortage area or a medically underserved area. If the subsidiary, satellite or affiliate does not so qualify, it shall obtain a certificate of need.

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(e) Notwithstanding the provisions of section 19a-638, as amended by this act, subsection (a) of section 19a-639a, as amended by this act, or subsection (a) of this section, no school-based health care center shall be subject to the provisions of section 19a-638, as amended by this act, or subsection (a) of this section if the center: (1) Is or will be licensed by the Department of Public Health as an outpatient clinic; (2) proposes capital expenditures not exceeding [one] three million dollars and does not exceed such amount; (3) once operational, continues to operate and provide services in accordance with the department's licensing standards for comprehensive school-based health centers; and (4) is or will be located entirely on the property of a functioning school.

(f) In conducting its activities under this section, section 19a-638, as amended by this act, or under both sections, the office may hold hearings on applications of a similar nature at the same time.

Sec. 3. Subsection (c) of section 19a-639a of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) Each health care facility, institution or provider that proposes to purchase, lease or accept donation of a CT scanner, PET scanner, PET/CT scanner, MRI scanner, cineangiography equipment or a linear accelerator shall be exempt from certificate of need review pursuant to sections 19a-638, as amended by this act, and 19a-639, as amended by this act, if such facility, institution or provider (1) provides to the office satisfactory evidence that it purchased or leased such equipment for under four hundred thousand dollars on or before July 1, 2005, and such equipment was in operation on or before July 1, 2006, or (2) obtained, on or before July 1, 2005, from the office, a certificate of need or a determination that a certificate of need was not required for the purchase, lease or donation acceptance of such equipment.



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Sec. 4. Subsection (a) of section 19a-639b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

(a) The Commissioner of the Office of Health Care Access or the commissioner's designee may grant an exemption from the requirements of section 19a-638, as amended by this act, or subsection (a) of section 19a-639, as amended by this act, or both, for any nonprofit facility, institution or provider seeking to engage in any activity, other than the termination of a service or a facility, otherwise subject to said section or subsection if:

(1) The nonprofit facility, institution or provider is proposing a capital expenditure of not more than [one] three million dollars and the expenditure does not in fact exceed [one] three million dollars;

(2) The activity meets a specific service need identified by a state agency or department and confirmed as a current need by the Office of Health Care Access; and

(3) The commissioner, executive director, chairman or Chief Court Administrator of the state agency or department that has identified the specific need confirms, in writing, to the office that (A) the agency or department has identified a specific need with a detailed description of that need and that the agency or department believes that the need continues to exist, (B) the activity in question meets all or part of the identified need and specifies how much of that need the proposal meets, (C) in the case where the activity is the relocation of services, the agency or department has determined that the needs of the area previously served will continue to be met in a better or satisfactory manner and specifies how that is to be done, (D) in the case where the activity is the transfer of all or part of the ownership or control of a facility or institution, the agency or department has investigated the proposed change and the person or entity requesting the change and

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has determined that the change would be in the best interests of the state and the patients or clients, and (E) the activity will be cost-effective and well managed.

Sec. 5. Section 19a-639c of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

Notwithstanding the provisions of section 19a-638, as amended by this act, or section 19a-639, as amended by this act, the office may waive the requirements of those sections and grant a certificate of need to any health care facility or institution or provider or any state health care facility or institution or provider proposing to replace major medical equipment, a CT scanner, PET scanner, PET/CT scanner, MRI scanner, cineangiography equipment or a linear accelerator if:

(1) The health care facility or institution or provider has previously obtained a certificate of need for the equipment to be replaced;

(2) The replacement value or expenditure for the replacement equipment is not more than the original cost plus an increase of ten per cent for each twelve-month period that has elapsed since the date of the original certificate of need; and

(3) The replacement value or expenditure is less than [two] three million dollars.

Sec. 6. Subsection (a) of section 19a-653 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

(a) (1) Any person or health care facility or institution that owns, operates or is seeking to acquire major medical equipment costing over [four hundred thousand] three million dollars, or scanning equipment, cineangiography equipment, a linear accelerator or other similar

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equipment utilizing technology that is developed or introduced into the state on or after October 1, 2005, or any person or health care facility or institution that is required to file data or information under any public or special act or under this chapter or sections 19a-486 to 19a-486h, inclusive, or any regulation adopted or order issued under this chapter or said sections, which fails to so file within prescribed time periods, shall be subject to a civil penalty of up to one thousand dollars a day for each day such information is missing, incomplete or inaccurate. Any civil penalty authorized by this section shall be imposed by the Office of Health Care Access in accordance with subsections (b) to (e), inclusive, of this section.

(2) If a person or health care facility or institution is unsure whether a certificate of need is required under section 19a-638, as amended by this act, or section 19a-639, as amended by this act, or under both sections, it shall send a letter to the office describing the project and requesting that the office make such a determination. A person making a request for a determination as to whether a certificate of need, waiver or exemption is required shall provide the office with any information the office requests as part of its determination process.

Approved May 8, 2006